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In this chapter. . .

This chapter briefly discusses the procedural requirements for pleas and trials in designated case proceedings. With a few exceptions, which are noted in this chapter, the procedural requirements for pleas and trials in designated case proceedings are the same as those in adult criminal proceedings. However, a complete discussion of those requirements is beyond the scope of this benchbook.

For discussion of plea bargains, see Section 8.6. For discussion of plea withdrawal, see Section 21.8. For discussion of fingerprinting and recordkeeping requirements, see Chapter 25.

Note on court rules. On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJI, 1998).

18.1 Court Rules Governing Pleas and Trials in Designated Case Proceedings

MCL 712A.2d(7) states:

“If a case is designated under this section, the proceedings are criminal proceedings and shall afford all procedural protections and guarantees to which the

juvenile would be entitled if being tried for the offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere or a verdict of guilty shall result in entry of a judgment of conviction. The conviction shall have the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction.”

Pleas. “Pleas in designated cases are governed by subchapter 6.300.” MCR 3.954. The court rules that govern guilty pleas and no contest pleas in designated cases are as follows:

- MCR 6.301–6.312—Pleas in Felony Cases
- MCR 6.610(E)—Pleas in Misdemeanor Cases. For a detailed discussion of misdemeanor pleas, see Criminal Procedure Monograph 3, *Misdemeanor Arraignments and Pleas* (MJI, 1992).

Trials. MCR 3.954 states that “[t]rials of designated cases are governed by Subchapter 6.400 of the Michigan Court Rules except for MCR 6.402(A). The court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer.”* Subchapter 6.400 governs the procedures for trials in criminal cases.

Jury procedure is governed by MCR 6.401–6.420. MCR 3.911(C)(4). In addition, MCL 712A.17(2) provides that the summoning and impaneling of jurors shall be governed by Chapter VIII (Trials) of the Code of Criminal Procedure (MCL 768.1 et seq.).

*See Section 18.3, below, for a discussion of waiver of the right to jury trial in designated cases.

18.2 Judges Who May Accept Pleas or Conduct Trials

The judge who presides at a preliminary examination may accept a plea in the designated case. MCR 3.912(C)(1). Moreover, the juvenile has the right to demand that the same judge who accepted the plea in a designated case preside at sentencing or delayed imposition of sentence, but not at a juvenile disposition of the designated case. MCR 3.912(C)(2).*

MCR 3.912(A)(3) requires a judge to preside at a jury or nonjury trial in a designated case proceeding. The judge who presides at the preliminary examination may not preside at the trial of the same designated case unless a determination of probable cause was waived. MCR 3.912(C)(1).

*See Section 19.1 (court’s options following conviction in designated case).

18.3 Waiver of the Right to Jury Trial

A criminal defendant has the right to be tried by a jury, or may, with the consent of the prosecutor and approval by the court, elect to waive that right and be tried before the court without a jury. MCR 6.401 and MCL 763.3.

A defendant's constitutional rights to trial by jury are contained in Const 1963, art 1, § 20, and US Const, Am VI. However, a criminal defendant has no constitutional or substantive right to insist upon a nonjury trial. *People v Kirby*, 440 Mich 485, 494 (1992) (requiring consent of prosecutor to waiver of jury trial does not violate due process).

Under the Michigan Constitution, the right to a jury trial applies in both felony and misdemeanor cases. *People v Harris*, 45 Mich App 217, 218–19 (1973).

In designated cases, the court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer. MCR 3.954. In delinquency cases, a jury trial is automatically waived unless the juvenile makes a demand for a jury trial.

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding. MCR 6.402(B).

The waiver procedure in MCR 6.402(B) differs from that contained in MCL 763.3(2), which requires a writing signed in open court by the defendant. The statute has been superseded by the court rule. *People v James*, 184 Mich App 457, 464 (1990).

18.4 Number of Jurors

MCR 6.410(A) states that, except as provided by this rule, a jury that decides a case must consist of 12 jurors.

18.5 Rules of Evidence and Standard of Proof

The Michigan Rules of Evidence apply to criminal proceedings. MRE 1101(a). The prosecuting attorney must prove, beyond a reasonable doubt, every fact necessary to constitute the crime charged. *Mullaney v Wilbur*, 421 US 684 (1975).

18.6 Verdicts in Designated Cases

Not Guilty. A verdict of “not guilty” shall serve as a finding that the defendant is not within the provisions of the Juvenile Code, MCL 712A.1 et seq., and the court shall enter an order dismissing the petition. MCL 712A.18(1).

Guilty. A jury verdict of “guilty” serves as a finding that the defendant is within the provisions of the Juvenile Code, MCL 712A.1 et seq., for the offense and is a conviction. The conviction has the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction. MCL 712A.2d(7).

18.7 Crime Victim Rights in Designated Case Proceedings

*See Section 4.3 for general discussion of Article 2 of the CVRA. See Section 10.12(K) for further discussion of enforcing a restitution order against a juvenile’s parent.

Article 2 of the Crime Victim’s Rights Act, MCL 780.751 et seq., applies to felonies and “serious misdemeanors” committed by juveniles. MCL 780.781(1)(f). For purposes of Article 2, “juveniles” are individuals less than 17 years old who are charged in delinquency or designated case proceedings. MCL 780.781(1)(d). However, for purposes of enforcing a restitution order against the parent of a juvenile who has been convicted in a designated case proceeding, Article 1 of the Crime Victim’s Rights Act applies. MCL 780.766(15)(a).*